

Retailers' Occupation Tax applies to the receipts of sales to persons who engage in the business of selling steam to purchasers for use or consumption and not for resale. 86 Ill. Adm. Code 130.2156(a). (This is a GIL.)

December 14, 2000

Dear Xxxxx:

This letter is in response to your letter dated September 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your email, you have stated and made inquiry as follows:

The purpose of this letter is to request a General Information Letter pursuant to 2 Ill. Admin. Code 1200.120 regarding the sale of steam in Illinois.

Our client is contemplating the formation of a company that will manufacture steam and sell it at retail to customers. The purchasers of the steam will be the end-users who will be using and consuming the steam.

The sale of steam will not include the return of any resulting condensate. Condensation occurs when the steam loses heat and results in the formation of water. The customers will be under no obligation to return the condensate to the seller. In other words, our client will only be selling steam.

In addition, some customers may choose to sell the condensate to the seller, although they are under no obligation to do so. The seller will use the condensate to manufacture steam, which, as described above, will be sold at retail.

The first question is whether our client, the seller, will be responsible to collect and remit Retailers' Occupation Tax (ROT) on the sale of steam to its customers?

The second question is whether the sale of the condensate to our client, the steam manufacturer, will qualify as a sale for resale?

Our analysis of the issues is as follows.

First, according to the applicable Department of Revenue regulation, 86 Ill. Admin. Code 130.2156, Vendors of Steam, it appears that the seller will be responsible to collect and remit ROT on the sale of steam to its customers. The regulation states that "[p]ersons who engage in the business of selling steam to purchasers for use or

consumption and not for resale, incur Retailers' Occupation Tax liability on their receipts from such sales.' 86 Ill. Admin. Code 130.2156(a). The regulation also states that '[p]ersons who are engaged in the business of transferring heat energy to purchasers using steam as the vehicle for that transfer, do not incur Retailers' Occupation Tax liability so long as no tangible personal property is transferred to the purchaser. This would be the case, for example, where the condensate, which results when the steam loses its heat, is returned to the seller.' 86 Ill. Admin. Code 130.2156(b). Put another way, there is no ROT liability where the condensate is returned to the seller at no cost.

Based on the regulation, it appears that our client will be responsible for ROT because the steam will be sold at retail (and not for resale) to purchases who will use or consume the steam and the condensate will not be returned to the seller unless both parties separately contract for such a transaction.

Second, it appears that the sale of the condensate to the steam manufacturer will qualify as a sale for resale. Under 86 Ill. Admin. Code 130.2156(b), there is not ROT liability where the condensate is returned to the seller at no cost. In our client's situation, some customers may choose to sell the condensate to our client, although they are under no obligation to do so. In other words, if customers choose to sell the condensate to our client, then our client must pay for it. Our client will then use the condensate as an ingredient in the manufacture of steam, which, as described above, will be sold at retail. Thus, the sale of condensate between the steam purchaser and the steam manufacturer should qualify as a sale for resale.

Please send your answers to my attention at the address above. If you require additional information, please feel free to contact me.

I look forward to your response.

The Retailers' Occupation Tax applies to the receipts of sales to persons who engage in the business of selling steam to purchasers for use or consumption and not for resale such as in cases when the condensate is not returned to the steam seller. See, 86 Ill. Adm. Code 130.2156(a), a copy of which is enclosed.

However, persons who are engaged in the business of transferring heat energy to purchasers using steam as the vehicle for that transfer, do not incur Retailers' Occupation Tax liability so long as no tangible personal property is transferred to the purchaser. This is the case where the condensate, which results from steam losing its heat, is returned to the seller. If the "steam purchaser" retains the condensate but then sells it back to the "steam seller," he will incur no Retailers' Occupation Tax liability, because condensate is transferred to the "steam seller" who then will resell the steam, once again, to the "steam purchaser". This transaction is deemed a sale for resale. In this case, an endless stream of nontaxable sales for resale between the "steam seller" and "steam purchaser" is created.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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